REMARKS

A. INTRODUCTION

The cited pillow in the Ranz reference does not anticipate applicant's claimed exercise device principally because Ranz is neither elongated nor a roller. Therefore, it is not an "elongated roller." We amended the claims to emphasize those differences further.

B. CLAIMS PENDING

The application had five original claims or which claims 1, 3 and 5 were independent. Claims 1 through 5 remain and claims 6 through 8 are new.

C. AMENDMENT OF THE SPECIFICATION

You objected to the reference numerals in paragraph 0021. Therefore, this amendment eliminates them. You suggested that we submit a new drawing showing the prior art. We did not do so because paragraph 0021 adequately describes the prior art without the need for an additional drawing.

We also amended paragraph 0013 to correct a grammatical error.

D. AMENDMENT OF THE DRAWING

We also submit formal drawings, which have been corrected so that plane 14 is horizontal.

E. THE CLAIMS DISTINGUISH OVER THE CITED ART

The amended claims distinguish over the cited art. Ranz U.S. Patent No. 1,274,595 (1918) is a "sanitary pillow." It is not an elongated roller because it is neither elongated nor would it roll. The word "elongated" infers "slenderness." *See The American Heritage Dictionary of the English Language* (4th Ed. 2000) ("1. Made longer; extended. 2. Having more length than width; slender.") (available at http://dictionary.reference.com/search?q=elongated). Likewise, "roller" means"

1. One that rolls or performs a rolling operation or activity.

2. Any of various cylindrical or spherical devices that roll or rotate, especially:

a. A small spokeless wheel, such as that of a roller skate or caster.

b. An ***elongated*** cylinder on which something, such as a window shade or towel, is wound.

c. A heavy revolving cylinder that is used to level, crush, or smooth.

d. Printing. A cylinder, usually of hard rubber, used to ink the type before the paper is impressed.

e. A cylinder of wire mesh, foam rubber, or other material around which a strand of hair is wound to produce a soft curl or wave. . . .

Id. (Emphasis added) (http://dictionary.reference.com/search?q=roller).

In addition, a person using Ranz's pillow would not lie on either curved end but would put his or her head on whichever flat surface between the two ends faces upward.

The amendment to claim 1 emphasizes the length dimension of the roller, which already had been specified as being "elongated." The amendment also specifies that the length is "substantially greater than the maximum distance between the top of the roller and the bottom of the roller. Though Ranz may have different curvatures for its ends, they are too far apart to allow rolling. The Ranz pillow is not intended to be used with the rounded ends facing downward or upward.

Claim 1 additionally requires that "the length [is] substantially greater than the maximum distance between the top of the roller and the bottom of the roller." Any argument that Ratz's ratio of the length of the pillow to the distance between the curved surfaces is insubstantial means that the Ranz pillow is not

elongated. Applicant's roller that Fig. 1 shows is elongated in that the ratio of the length to the height is approximately 3:1.

Claims 3 and 5, which require an "elongated roller" also stress similar concepts.

Claim 5 was amended, and it remains in means-plus-function (35 U.S.C. § 112, ¶ 6) format. You said that the different shape of the ends of the Ratz pillow would change the balance. We disagree because Ranz would not balance on either end. Nevertheless, we amended the claim to specify that there is means for "balancing the roller on at least the bottom."

Section 112, ¶ 6, "requires one construing means-plus-function language in a claim must look to the specification and interpret the language in light of the corresponding structure, material, or as described therein, and equivalents thereof, to the extent that the specification provides such disclosure." *In re Donaldson Co.*, 16 F.3d 1169, 1193, 29 U.S.P.Q. 2d (BNA) 1845. (Fed. Cir. 1994) (*en banc*); *See also* M.P.E.P. § 2181 (8th Ed., 5/2004 Rev.).

The drawings show that applicant's elongated roller normally rests on surface 18. Applying a horizontal force would cause the roller to pivot about the line of contact of the curved surface with the floor, table or other surface. The roller would return to its original orientation if one applies a small force to the roller. However, Ranz would not balance and is not designed for balancing. If one attempted to position the Ranz pillow on its curved ends, any horizontal force would cause the pillow to fall over to rest on one of its flat surfaces.

Anticipation (§ 102) rejections are proper only if all the claim elements exist in a single reference. *See Gechter v. Davidson,* 116 F.3d 1454, 1457, 43 U.S.P.Q. 2d 1030, 1032 (Fed. Cir. 1997) ("Under 35 U.S.C. § 102, every limitation of a claim must identically appear in a single prior art reference for it to

anticipate the claim."). Ranz is neither a roller nor an elongated one. Therefore, it does not anticipate.

The office action does not include a § 103 rejection. Nevertheless, we mention obviousness briefly. Because of the substantial differences between the cited art including Ranz and applicant's exercise roller, no § 103 rejection would be proper.

> Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so. Although couched in terms of combining teachings found in the prior art, the same inquiry must be carried out in the context of a purported obvious "modification" of the prior art. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.

In re Fritch, 972 F.2d. 1260, 1266, 23 U.S.P.Q. 2d 1780, 1783-4 (Fed. Cir. 1992) (citations and internal quotation marks omitted).

F. CONCLUSION

Our amendments overcome the objections and rejections. Therefore, we submit that this case is in condition for allowance. If you have any questions that we could resolve by telephone, please call us for a brief interview.

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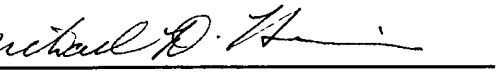

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